

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:

HOUTEX BUILDERS, LLC, *et al.*,¹

DEBTORS.

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Case No. 18-34658
Chapter 11

**DEBTORS' MOTION FOR ORDER COMPELLING TURNOVER OF PROPERTY
PURSUANT TO 11 U.S.C. §§ 542(A) & (E)**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

Houtex Builders, LLC ("HTB"), 2203 Looscan, LLC ("Looscan") and 415 Shadywood, LLC ("Shadywood") (collectively, the "Debtors") file this *Debtors' Motion for Order Compelling Turnover of Property Pursuant to 11 U.S.C. § 542(a) & (e)* (the "Motion") requesting that this Court order that Wyndolyn Ramirez ("Ramirez") and Wynne Design Works ("WDW") produce any documents or other recorded information—including contracts, plans, designs, selections, takeoffs, schedules, invoices, receipts, and payment records—relating to the Debtors' property and financial affairs. In support of the Motion, the Debtors respectfully submit the following:

¹ The names of the debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Houtex Builders, LLC (2111), 2203 Looscan, LLC (1418) and 415 Shadywood, LLC (7627).

SUMMARY

1. The Debtors hired and paid Ramirez and WDW to provide interior design services related to residential properties which were being developed for eventual sale. Despite being paid thousands of dollars for services, Ramirez and WDW have refused to provide any of the requested information to the Debtors. The documents and information requested herein are necessary so that the Debtors may proceed with the sale of their assets, and possession of such documents will serve to increase the value of the property of the estate for the benefit of the creditors.

JURISDICTION AND VENUE

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are §§ 542(a) & (e) of title 11 of the United States Code (the “Bankruptcy Code”).

BACKGROUND

A. The Debtor’s Bankruptcy Case

3. On August 23, 2018 (the “Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, with the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “Bankruptcy Court”).

4. The Debtors continue to administer their assets as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Debtor’s bankruptcy case.

5. The purpose of the Debtors filing chapter 11 is to wind-down the Debtors’ residential construction business operations for the benefit of creditors, including, but not limited to, monetizing the Debtors’ assets (including real property, improvements and fixtures located thereon, rights to prepaid services and rights to construction warranties associated with the property),

liquidating claims through the claims objection process and, if sufficient funds exist, confirming a liquidating plan under the Bankruptcy Code.

B. The Debtors' Formation and Operations

6. The Debtors are special purpose entities established for the purpose of constructing new houses. Debtor Houtex Builders, LLC owns the properties located at 3 Thornblade Circle, The Woodlands, TX 77389 ("Thornblade") and 5325 Lynbrook Dr., Houston, TX 77056 ("Lynbrook"). The houses on Thornblade and Lynbrook are completely built and these properties are currently being marketed for sale through a real estate agent. Debtor 415 Shadywood, LLC owns the property located at 415 Shadywood Rd, Houston, TX 77057 ("Shadywood"). The construction of the house on Shadywood is incomplete. Debtor 2203 Looscan Lane, LLC owns the property located at 2203 Looscan Ln., Houston, TX 77019 ("Looscan") and collectively with Thornblade, Lynbrook, and Shadywood, the "Properties"). The construction of the house on Looscan is incomplete.

C. Ramirez, WDW, and Their Relationship with the Debtors

7. Ramirez owns and operates WDW. Ramirez is a resident of Harris County, and resides at 6022 Viking Drive, Houston, Texas 77092. On information and belief, Ramirez operates WDW out of her home.

8. Ramirez and WDW were retained to provide interior design services associated with several properties, including Shadywood and Looscan. In accordance with this Court's Order dated September 7, 2018, CD Homes produced documents related to both Looscan and Shadywood to the Debtors on September 10, 2018 and September 17, 2018, respectively. A review of these files indicated that Ramirez and WDW were paid at least \$23,000 related to services provided for

Looscan and \$46,000 related to services provided for Shadywood. Copies of these records for Looscan are attached as **Exhibit A**, and the records for Shadywood² are attached as **Exhibit B**.

D. Sale Procedures

9. On September 27, 2018, the Court entered an order establishing sale procedures for Looscan and Shadywood [ECF 71]. The Debtors are working with Martha Turner to market Looscan and Shadywood.

10. Notably, prospective purchasers have inquired about and specifically requested that any plans, designs, takeoffs, and schedules that were prepared by Ramirez and WDW during their retention be included as part of the purchase of the Properties.

RELIEF REQUESTED

11. The Debtors file this Motion and request that the Court enter an order compelling Ramirez and WDW turn over the following categories of documents within five (5) days from the date of the order compelling production:

- (a) All plans, designs, takeoffs, and schedules of any kind related to the Debtors;
- (b) Any contracts, agreements, or other documents executed by or on behalf of the Debtors;
- (c) All invoices for work performed related to the Debtors;
- (d) All receipts and payment records that relate to the Debtors and their property; and
- (e) Any and all other documents that are the property of the Debtors that are not otherwise described herein.

ARGUMENTS AND AUTHORITIES

12. The Bankruptcy Code provides that Ramirez and WDW are required to turn over

² The property owned by Shadywood is located at the corner of Pine Forest Road and Shadywood Road. When the property was acquired, the original house's address was 6018 Pine Forest Road. The newly constructed home, however, has an address of 415 Shadywood Road. As a result of the change, invoices from earlier in the construction phase make reference to "6018 Pine Forest" while later invoices refer to "415 Shadywood."

the requested information they have related to the Debtors. More specifically, 11 U.S.C. § 542 provides the basis for the Court to compel the turnover of the requested information in at least two subsections. First, § 542(a) provides that “an entity . . . in possession, custody, or control, during the case, of property that the trustee³ may use, sell, or lease under section 363 of this title . . . shall deliver to the trustee . . . such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.” Second, § 542(e) states as follows:

Subject to any applicable privilege, after notice and a hearing, the court may order an attorney, accountant, or other person that holds recorded information, including books, documents, records, and papers, relating to the debtor’s property or financial affairs, to turn over or disclose such recorded information to the trustee.

The five categories of information described above fall under Section 542’s purview because they both (a) constitute property of the estate under § 542(a) because the Debtors’ paid Ramirez and WDW for interior design services provided; and (b) relate to the Debtors’ property or financial affairs, and thus, Ramirez and WDW are required to turn over the requested information under § 542(e). Therefore, the Debtors request the Court enter an order compelling Ramirez and WDW to turn over the requested information so that the Debtors may use the information in connection with the sale of the Properties.

NOTICE

13. Notice of this Motion has been provided to Ramirez and WDW as follows by email at wyndy@wynnedsignworks.com and by FedEx delivery to 6022 Viking Drive, Houston, Texas 77092.

14. Notice of this Motion has also been provided by delivery to: (a) the Office of the United States Trustee for the Southern District of Texas; (b) each of the creditors identified on each Debtors’ list of twenty largest unsecured creditors; and (c) those persons who have formally

³ Although the statute specifically references providing such information to the trustee, 11 U.S.C. § 1107(a) provides that a debtor in possession “shall have all the rights . . . and powers . . . of a trustee.”

appeared in these Chapter 11 Cases and requested service pursuant to Bankruptcy Rule 2002.

15. In light of the nature of the relief requested in this Motion, the Debtors submit that no further notice is necessary.

NO PRIOR REQUEST

16. No prior motion or application for the relief requested herein has been made to this Court or any other court.

Dated: October 2, 2018

Respectfully submitted,

DIAMOND McCARTHY LLP

/s/ Charles M. Rubio

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*Proposed Counsel to Debtors
and Debtors-In-Possession*

CERTIFICATE OF SERVICE

I hereby certify that this document was served on (a) the Office of the United States Trustee for the Southern District of Texas; (b) each of the creditors identified on each of the Debtors' list of twenty largest unsecured creditors; and (c) those persons who have formally appeared in these Chapter 11 Cases and requested service pursuant to Bankruptcy Rule 2002, within one business day of the filing. This document was also served on Wyndolyn Ramirez and Wynne Design Works as described below:

Email:

wyndy@wynnedesignworks.com

FedEx:

6022 Viking Drive
Houston, Texas 77092

/s/ Charles M. Rubio